

186 Center Street Suite 290 Clinton, NJ 08809 (908) 735-9315 (908) 735-2132 FAX

March 17, 2014

VIA ELECTRONIC & US MAIL

Ms. Jennifer LaPoma
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007

Re: Monthly Progress Report No. 18 – February 2014 Lower Passaic River Study Area (LPRSA) River Mile 10.9 Removal Action CERCLA Docket No. 02-2012-2015

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the month of February, 2014.

Meetings/Conference Calls

- On February 5, EPA and CPG held a teleconference to review progress in capping.
- On February 12, EPA and CPG held a teleconference to review progress in capping.
- On February 19, EPA and CPG held a teleconference to review progress in capping.
- On February 26, EPA and CPG held a teleconference to review progress in capping.

Correspondence

- On February 3 and 12, CPG forwarded to EPA a status report of the prior weeks' field operations.
- On February 3, CPG submitted to EPA revision 10 of the RM 10.9 Capping Plan.
- On February 3, CPG documented for EPA a summary of the January 28 teleconference.
- On February 5, CPG asked EPA if they had any comments on the revised Capping Plan.
- On February 7, EPA indicated they had no comments on the revised Capping Plan, and directed that prior to placement of the armoring layer, CPG should take "confirmatory samples to verify that the thickness of the active layer still meets the overall design requirements."
- On February 7, CPG provided to EPA an updated schedule for cap armoring activities.



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- On February 10, CPG distributed to EPA an agenda for the February 12 teleconference.
- On February 11, CPG documented for EPA a summary of the February 5 teleconference.
- On February 14, 16, 24, 26 and 28, CPG informed the counties and all bridge operators of its requests (and modifications to those requests) for bridge openings.
- On February 14, Essex County informed CPG they would not accept any requests for bridge openings until further notice.
- On February 17, CPG provided to EPA a summary of the February 12 teleconference.
- On February 19, CPG forwarded to EPA results from sampling active layer thickness in 10 locations across the Removal Area on February 17. CPG offered to take additional confirmatory samples at EPA's request.
- On February 19, CPG discussed with EPA the upcoming start to Fish Window restrictions impacting the RM 10.9 Removal Action, and asked for EPA direction on how to proceed.
- On February 20, CPG notified EPA that the Poseidon barge, designed to support
 placement of the geotextile, had arrived at the RM 10.9 Removal Area and that activities
 were continuing to support a target date of February 24 for resumption in capping
 activity.
- On February 21, EPA asked the CPG who it had previously contacted at the National Marine Fisheries Service (NMFS) to discuss the fish window; CPG responded on February 22 that the CPG and its contractors had had no contact with NMFS and clarified that NJDEP had taken the responsibility during a November 2012 meeting for contacting and coordinating with agencies such as NMFS.
- On February 21, 22, and 23 CPG provided updates to EPA on daily activities completed in support of its target resumption date of February 24.
- On February 24, At EPA's request the CPG contacted NMFS concerning the fish window; NMFS informed the CPG that the severe winter in New Jersey would move the start of the fish window until at least March 15; CPG summarized its conversation with NMFS in an email to EPA the same day.
- On February 24, CPG notified EPA that they would not be prepared to begin placement of the armoring layer until February 25.
- On February 25, CPG notified EPA that they still would not be prepared to begin placement of the armoring layer until February 26.
- On February 26, CPG distributed to EPA an agenda for the February 26 teleconference.
 On February 26, CPG notified EPA that the first portion of the cap armoring layer was placed successfully.
- On February 27, CPG asked the Lyndhurst Township engineer if the discharge from the Township's storm water lift station could be temporarily turned off or slowed down when the armoring layer is being placed immediately adjacent to the location of the discharge.
- On February 27, CPG notified EPA of difficulty in placing the second armoring panel and stone in which fabric and stone were believed to slip down the slope into the navigation channel, and that armor placement would be resumed further downriver where the slope is less steep until the actual cause for the loss of fabric and stone could be determined.



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- On February 28, CPG submitted to EPA a status report on daily operations for February 27 and 28.
- On February 28, the Township of Lyndhurst proposed a method and cost for CPG consideration to temporarily redirect the storm water discharge; CPG responded that they would schedule their work in front of the discharge so that impacts of any discharge on armor placement would not be as impactful as originally suspected.
- On February 28, EPA sent an email to the CPG that stated the NJDEP is modifying the
 water front development permit equivalency to allow the work to proceed by modifying
 the timing restriction on the fish window and EPA would provide the official notification to
 the CPG when it is received from NJDEP.

Work

- On February 17, CPG measured active layer thickness in 10 locations across the Removal Area.
- On February 19, Great Lakes conducted a kick-off meeting for the crew that will be completing the cap placement.
- On February 20, new equipment to support the capping operations was transported to the RM 10.9 Removal Area.
- On February 21, Nutley Township asked CPG workers to remove their cars from the Nutley Boat Ramp parking area to provide room for dumping snow into the Passaic River.
- On February 26, the first panel of geotextile and armoring stone was successfully placed at the upstream reach of the RM 10.9 Removal Area, and additional armoring panels and stone were placed in subsequent days.

(b) Results of Sampling and Tests

 No data packages associated with the RM 10.9 Removal Action were submitted in February.

(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will remove stone from previous armoring efforts on the RM 10.9 Removal Area.
- CPG will continue installing geotextile and armoring stone in accordance with a revised Capping Plan.
- CPG will examine the cause for geotextile and armoring stone loss that occurred on February 27, will confirm active layer thickness in that area, and will complete the cap in that area after steps are taken to ensure similar loss of material does not occur again.
- CPG will install a habitat layer on top of the armoring stone.
- CPG will continue to monitor turbidity during cap placement as long as required by EPA.
- CPG will implement sampling of water and/or air quality if community complaints or turbidity monitoring indicate that capping is a possible cause for environmental impacts.



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- CPG will continue to provide regular and as-needed updates to river users about barge movements and other important project milestones.
- CPG will continue to monitor bridge operability issues.
- When capping operations are completed, CPG will demobilize from the RM 10.9 Removal Area.
- CPG will draft a Final Report.

(d) <u>Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays</u>

- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.
- The inoperability of the Bridge Street Bridge (BSB) due to Hurricane Sandy damage delayed the start of the RM 10.9 Removal Action because equipment could not be mobilized up river until that bridge was operational. CPG informed EPA of a Force Majeure condition by phone on June 24 and in writing on June 29 as required by the AOC. CPG and its contractors worked with the Counties to resolve the BSB operational issues and agreed to provide funds to the three counties to support operator overtime.
- The CPG strongly disagrees with the EPA's July 15 letter denying the Force Majeure condition outlined in CPG's June 29, 2013. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties have failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31 letter to EPA.
- A significant mechanical failure that occurred on August 31 at BSB resulted in a second Force Majeure condition that prevented any barge movement from August 31 through September 18. The CPG provided initial notice to EPA's oversight contractor on August 31 and provided additional information on September 1 to the EPA. On September 5, the CPG submitted a Force Majeure letter regarding the possible impact of this bridge failure on Removal Action schedules, which was then updated on September 17. On September 3, the CPG notified the US Coast Guard of the situation and requested that the USCG use its authority to direct that the bridge be opened so that marine traffic can resume; the USCG would not compel the Counties to operate the BSB based on the Counties' initial concern about damage to the BSB. However, the Counties subsequently determined that the BSB could be opened without damage but demanded monetary compensation for bridge openings that they are required to provide upon receipt of

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proper and timely notice (without compensation) pursuant to federal regulations. The CPG reluctantly agreed to provide the compensation in order to complete the Removal Action. EPA and USCG have been reluctant and unwilling to utilize their enforcement and regulatory authority to compel the Counties to fulfill their obligation. The re-opening of BSB on September 18 allowed dredging to resume.

- Hudson County has notified the CPG that BSB will need to be taken out of service for what they now indicate is a 10 15 day period as soon as schedules allow, to allow replacement of a second shaft which the County's mechanical contractor indicates is now showing signs of being stressed. The CPG will continue to monitor this situation and notify Hudson County of its schedule so that repairs can be scheduled at a time that has minimum disruption on the capping schedule. However, if the second shaft suffers damage before that time, capping operations may be delayed if BSB is again taken out of service and the repair schedule prevents it from even being opened with winches.
- Both tidal and river flow continue to complicate the placement of geotextile fabric and armoring stone on top of the Active Layer. The anticipated completion date for field work in now extends into April, 2014. If conditions warrant, additional alternative methods may still need to be identified and implemented in order to avoid further push back in the schedule.
- Very low temperatures and extended periods of extreme winter weather have impacted
 the operability of bridges that span the Lower Passaic River and have at times iced-in
 some of the support vessels restricting equipment transport and movement. Additional
 periods of severe winter weather could result in additional delays in completing the
 Removal Action.

If you have any questions, please contact Bill Potter, Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.

Stan Kaczmarek, PE

RM 10.9 Removal Action Project Coordinator

cc: Pat Hick, EPA Office of Regional Counsel William Hyatt, CPG Coordinating Counsel Jay Nickerson, NJDEP

Roger McCready, CH2M Hill Sharon Budney, CDM-Smith

Elizabeth Franklin, US Army Corps of Engineers